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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/612,254      | 07/02/2003  | Michael Lambright    | 121046-001          | 3335             |

35684 7590 06/27/2008

BUTZEL LONG  
IP DOCKETING DEPT  
350 SOUTH MAIN STREET  
SUITE 300  
ANN ARBOR, MI 48104

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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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DATE MAILED: 06/27/2008

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|---------------------------------|-------------|---|---------------------|
| 10612254                        | 7/2/2003    | LAMBRIGHT, MICHAEL                                | 121046-001          |

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**EXAMINER**

GREGORY W. ADAMS

| ART UNIT | PAPER |
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| 3652 | 20080522 |
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**Commissioner for Patents**

The appeal brief submitted on April 14, 2008 is still defective for the reasons set out in the March 11, 2008 Notice of Non-Compliance. Appellant has corrected the evidence inasmuch as copies of the evidence argued in Appellants Brief are now properly included. However, it does not properly list where said evidence was entered by the examiner. 37 CFR 41.37(c)(1) states,

"Any appendix containing copies of any evidence submitted pursuant to 1.130, 1.1.31 or 1.1.32 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See 41.33 for treatment of evidence submitted after appeal." Properly entered evidence is that which appears before Appeal.

Further, 37 CFR 41.37(c)(2) states "A brief shall not include...any new or non-admitted...evidence." This would include evidence that appears for the first time in an appeal brief, i.e. after the close of prosecution. Appellants attention is respectfully directed to 37 CFR 41.33 for guidance as to when evidence can be entered after the filing of a notice of appeal.

Appellants April 14, 2008 brief lists evidence as appearing in the "brief on Appeal". As noted above, this is incorrect because in the brief is not before the close of prosecution. For example, evidence no. 1 Dictionary Definition of "tube" appeared in the course of prosecution in Appellants Amendment after final, submitted on Feb. 14, 2007. Upon review if Appellant finds that evidence was not submitted prior to the close of prosecution, that evidence cannot be included in the brief.

The time period for reply set forth in the Notice of Non-Compliance of 4/20/07 is still running and extensions of time are available.

/Saúl J. Rodríguez/  
Supervisory Patent Examiner, Art Unit 3652

/G. W. A./  
Examiner, Art Unit 3652